

NOV 30 2005

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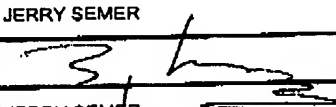
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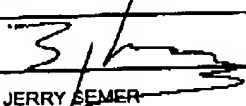
TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10766,434	
	Filing Date	10/26/2004	
	First Named Inventor	Donald E. Black	
	Art Unit	3711	
	Examiner Name	Michael S. Chambers	
Total Number of Pages in This Submission	5	Attorney Docket Number	4012

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	JERRY SEMER		
Signature			
Printed name	JERRY SEMER		
Date	November 30, 2005	Reg. No.	33, 087

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: DONALD E. BLACK

Serial No.: 10/766,434

Group No.: 3711

Filed: 01/26/2004

Con. No. 3611

Examiner: Michaels S. Chambers

Att. Doc. No. 4012

For: TRAINING BAT SYSTEM

RESPONSE TO OFFICE ACTION

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant petitions for a review of examiner's decision to make the
office action of November 14, 2005 final.

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this petition is being facsimile transmitted to the
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November 30, 2005


JERRY SEMER

REMARKS/ARGUMENT

Applicant petitions for a review of examiner's decision to make the office action of November 14, 2005 final. Applicant states that MPEP 706.07 clearly states that "before a final rejection is in order a clear issue should develop between the examiner and the applicant. Applicant states that no clear issue has developed between applicant and examiner.

Applicant states that the office action of November 14, 2005 is based on a new search by the examiner that pulled off patents that were much closer to claimed invention than the patents put forth in the previous office action.

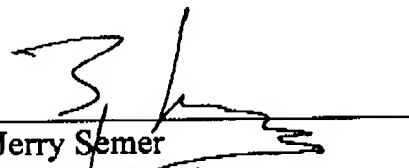
Applicant states that there is a totally new primary reference and that all the secondary references are also new except for one secondary reference which deals with two claims of the twenty claims. Thus, no issue has really developed between 18 of the claims in the patent application, since applicant has not been able to make any argument or any amendments to his claims to get around the newly put forth references from a new search. Applicant would also like to point out that MPEP 706.07 (a) states that a second or any subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection on prior art not of record, of any claim amended to include limitations that should be reasonably have been expected to be claimed." In this case the

newly cited art is much closer than the previous art cited. This case involves a bat and the previous art cited before the office action of November 14, 2005 was of a baton and a flashlight. The Examiner has done a new search and has put forth several patents that have to do with baseball bats. These baseball bats are clearly closer art to the baseball bat claimed than the art of the previous office action. The examiner should have known that the claims would be easily amended just by more specifically describing the bat to get around the baton and flashlight. Applicant believes that he should have a right to make at least one argument and amendments to these claims before a final rejection is made. Applicant does not believe that there is any real issue between examiner and applicant because examiner has yet to hear applicant's arguments on the newly cited art.

Applicant does not believe, further, applicant is not 100% certain exactly what parts of the primary reference refer to what elements of the claim. Applicant needs to get clarification on this issue before he can even make his arguments. Thus, applicant believes that the arguments put forth by applicant in his answer to this office action will be substantially different to reflect the substantially different and closer art than the examiner has put forth. Applicant believes that he should have the right to present these

arguments and the examiner should have the right to listen to them and make his decision upon these without having applicant fall within the very restrictive amendment practice as to amendments after final.

Respectfully Submitted



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